



DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. ICEB-2020-0010]

Privacy Act of 1974: Implementation of Exemptions; U.S. Department of Homeland Security U.S. Immigrations and Customs Enforcement, DHS/ICE-001 Student and Exchange Visitor Program System of Records, formerly known as the Student and Exchange Visitor Information System of Records.

AGENCY: U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Homeland Security (DHS) is giving concurrent notice of an updated and reissued system of records pursuant to the Privacy Act of 1974 for the “DHS/U.S. Immigrations and Customs Enforcement (ICE)-001 Student and Exchange Visitor Program System of Records” and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by docket number ICEB-2020-0010, by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202-343-4010.

- Mail: Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, D.C. 20528-0655.

Instructions: All submissions received must include the agency name and docket number ICEB-2020-0010. All comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov/>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact:

Jordan Holz, (202) 732-3300, Privacy Officer, ICEPrivacy@ice.dhs.gov, U.S.

Immigration and Customs Enforcement, 500 12th S.W., Washington, D.C. 20536. For privacy issues please contact: Lynn Parker Dupree, (202) 343-1717, Chief Privacy Officer, Privacy@hq.dhs.gov, Privacy Office, U.S. Department of Homeland Security, Washington, D.C. 20528-0655.

SUPPLEMENTARY INFORMATION:

I. Background:

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) proposes to modify, rename, and reissue a current DHS system of records notice (SORN) titled, “DHS/ICE-001 Student and Exchange Visitor Information System (SEVIS),” 75 Fed. Reg. 412 (January 5, 2010). ICE had previously reissued a Final Rule for this SORN on October 23, 2008, published at 73 Fed. Reg. 63057. As a result of the modifications to this SORN, DHS/ICE is proposing to issue this new rule.

The DHS/ICE update to SEVIS includes several changes. First, the system of records is being renamed “Student and Exchange Visitor Program (SEVP)” to better align with the purpose of the program. The system of records contains records on nonimmigrant students and exchange visitors and their dependents admitted to the United

States under the F, M, or J class of admission (hereinafter, “F/M/J nonimmigrants”), and the schools and program sponsors that enroll F/M nonimmigrants and host J nonimmigrants in the United States, to ensure compliance with immigration laws and regulations and to ensure such persons’ nonimmigrant status is maintained. In addition, this system of records contains records on the certification of academic and vocational schools to authorize the enrollment of F and M nonimmigrant students based on federal regulations, and provides guidance and training to school officials about the SEVP certification requirements to which schools must adhere to and the requirements that nonimmigrant students must follow to maintain their nonimmigrant status.

Second, DHS is clarifying the types of individuals and entities contained in this expanded system of records. Some items in the categories of individuals section have been reorganized and edited to more clearly identify the individuals, as well as expanded to include new categories of individuals, such as employers, financial support providers, government bodies and personnel, host families, members of the public, school employees, school partners, and school and exchange visitor program officials.

Third, DHS is modifying and expanding the categories of records section to better identify the types of information contained in the system of records. The new categories of records include education, employment, financial, travel, immigration-related information, school, program sponsor, case-related information, auditing and training, reporting, and inquiries and data corrections.

Fourth, DHS is modifying Routine Use E and adding Routine Use F to conform to Office of Management and Budget (OMB) Memorandum M-17-12, “Preparing for and Responding to a Breach of Personally Identifiable Information” (Jan. 3, 2017). All the following routine uses are being renumbered to account for the additional routine uses.

Finally, DHS is proposing to eliminate several routine uses, modify several routine uses, and add two new routine uses that would allow ICE to share information

from the SEVP system of records with the specified recipients for the specified purpose.

Below is a summary of those routine uses and their corresponding letter.

(J) Routine Use J is being updated to include disclosures to parties to an administrative proceeding where DHS has an interest in the outcome. This modification eliminates the need for two routine uses previously identified as Routine Uses K and L, and subsequent routine uses are being relettered to account for this change.

(O) Existing Routine Use P is being updated and relettered as Routine Use O to clarify that information may be shared about nonimmigrants between certified schools or programs as part of the transfer process from one school or program to another.

(R) Existing Routine Use S is being updated to be consistent with the DHS standard routine use for technology and is now Routine Use R. The modification eliminates the need for one routine use previously identified as Routine Use T, and subsequent routine uses are being re-lettered to account for this change.

(V) Routine Use V is being added to permit sharing identifying information with accrediting agencies, recognized by the Department of Education (ED), to facilitate the inspection and validation of schools and exchange visitor programs in adherence to laws and regulations, and subsequent routine uses are being re-lettered to account for this additional routine use.

(W) Routine Use W is being added to clarify the sharing and disclosure of information to federal, state, local, and other government and public agencies, including foreign or international agencies when the information is relevant and necessary to DHS or a requesting agency's decision concerning the hiring or retention of an individual, or the issuance, grant, renewal, suspension or revocation of a security clearance, license, contract, grant or other benefit.

Information in the SEVP system of records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/ICE may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this SORN. This modified system of records will be included in DHS's inventory of record systems.

II. Privacy Act:

The Privacy Act embodies Fair Information Practice Principles in a statutory framework that governs the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A system of records is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other matched identifiers assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Further, those persons who do not currently fall under the definition of individuals may naturalize or adjust status, thus becoming Privacy Act-covered individuals, over the course of this system's records retention schedule.

Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. The JRA also prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must

issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/ICE-001 SEVP System of Records. Some information in the DHS/ICE-001 SEVP System of Records relates to official DHS national security, law enforcement, immigration, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to ensure DHS's ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case-by-case basis.

A notice of System of Records for DHS/ICE-001 SEVP is also published in this issue of the Federal Register.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

PART 5 DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 et seq.; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301.

2. In Appendix C to Part 5, revise paragraph 10 to read as follows:

Appendix C to Part 5 – DHS Systems of Records Exempt From the Privacy Act

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10. The DHS/ICE-001 Student and Exchange Visitor Program System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/ICE-001 Student and Exchange Visitor Program System of Records is a repository of information held by DHS in connection with collecting and maintaining pertinent information on nonimmigrant students and exchange visitors, schools and exchange visitor programs, school officials and exchange visitor sponsors that host exchange visitors while in the United States. In addition, SEVP maintains and collects information pertinent to the certification and oversight of academic and vocational schools (U.S.-based schools) that seek to enroll F and M nonimmigrant students to ensure compliance with federal laws and regulations. Failure to comply will result in the withdrawal of the school's certification, prohibiting the school from enrolling F and M nonimmigrant students.

This system of records permits DHS to monitor compliance by these persons with the terms of their admission to the United States, and assists DHS with its several and varied missions and functions, including, but not limited to, the enforcement of civil and criminal laws, and the investigations, inquiries, and proceedings thereunder, and national security and intelligence activities. The DHS/ICE-001 Student and Exchange Visitor Program System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2) has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8);

(f); and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).

Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Exemptions from these particular subsections are justified, on a case-by-case basis, to be determined at the time a request is made, for the following reasons:

- (a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.
- (b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the

subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

- (c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interest of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.
- (d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.
- (e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.
- (f) From subsections (e)(4)(G) through (I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to the existence of records

pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because, with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in the disclosure of investigative techniques, procedures, and evidence.

(j) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Lynn Parker Dupree,
Chief Privacy Officer,
Department of Homeland Security.

[FR Doc. 2021-26478 Filed: 12/7/2021 8:45 am; Publication Date: 12/8/2021]